818.

SUPREME COURT OF THE UNITED STATES.

No. 128.

ADAM D. STEWART, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT U. S., FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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[GIDEON, Print.]

UNITED STATES OF AMERICA.

The President of the United States to the judges of the circuit court of the District of Columbia, sitting for the county of Washington:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, wherein the United States of America is plaintiff, and Adam D. Stewart is defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your hand, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December, in said Supreme Court to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court.

Issued the first day of September, 1853.

JNO. A. SMITH,
Clerk circuit court, Washington county, D. C.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United , pursuant to a writ of error filed in the office of the clerk of the circuit court of the District of Columbia, for the county of Washington, wherein Adam D. Stewart is plaintiff in error, and the United States are defendants in error, to show cause, if any there be, why judgment rendered against the said Adam D. Stewart, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge of the circuit court of the District of Columbia.

W. CRANCH.

Copy—Appeal bond.

Know all men by these presents that we, Adam D. Stewart, Benjamin F. Larned, and William D. Beall, are held and firmly bound

unto the United States of America in the full and just sum of two hundred dollars, lawful money of the United States; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this first day of September, eighteen hundred and fifty-three.

Whereas lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the United States were plaintiffs, and the said Adam D. Stewart was defendant, judgment was rendered against the said defendant, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the defendants in error, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next:

Now the condition of the above obligation is such, that if the said Adam D. Stewart shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void; otherwise to be and remain in full force and virtue.

BENJ'N F. LARNED, [SEAL.]
WM. D. BEALL, [SEAL.]

Witness—W. S. Cox.
Approved. W. CRANCH.

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, in the year of our Lord one thousand eight hundred and fifty-two, and of the independence of the United States the seventy-seventh:

Were present, the honorable William Cranch, chief judge; James S. Morsell and James Dunlop, asst. judges; Richard Wallach, esq'r, marshal; John A. Smith, clerk.

In the records of proceedings of the said court, amongst others, are the following, to wit:

Parties.

UNITED STATES
vs.
ADAM D. STEWART.

Be it remembered, that heretofore, to wit, on the third day of February, in the year eighteen hundred and thirty-five, the said plaintiffs, by Francis S. Key, esquire, their attorney, prosecuted and sued forth,

out of the circuit court here, the United States writ of capias ad respondendum against the defendant, to the marshal of the District aforesaid directed, in the words and of the tenor following, to wit:

Capias ad respondendum.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the marshal of the District of Columbia, greeting:

We command you that you take Adam D. Stewart, late of Washington county, if he shall be found within the county of Washington, in your said District, and him safely keep, so that you have his body before the circuit court, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of March, to answer unto the United States in a plea of trespass in the case, and so forth.

Hereof fail not at your peril; and have you then and there this writ.

Witness W. Cranch, esquire, chief judge of our said court, at the city of Washington, the 15th day of January, anno Domini one thousand eight hundred and thirty-five.

Issued the 3d day of February, 1835.

W. BRENT, *Clerk.*

And the aforesaid plaintiffs, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforegoing writ, declared against the said defendant in the plea aforesaid, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA,
Washington county, to wit:

Adam D. Stewart was attached to answer unto the United States of America in a plea of trespass on the case, and so forth; and whereupon the said plaintiffs, by F. S. Key, their attorney, complain that whereas the said defendant, on the first day of July, in the year of our Lord one thousand eight hundred and thirty-three, at the county aforesaid, was indebted to the said plaintiffs in the sum of six hundred and thirty-eight dollars eighty-one cents, current money of the United States, for sundry matters and articles properly chargeable in an account, as by a particular account thereof, herewith into court exhibited, appears; and being so indebted, the said defendant, *the said defendant*, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised the said plaintiffs to pay them the aforesaid sum of money, when afterwards he should be thereunto required:

And whereas the said defendant, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted to the said plaintiffs in another sum of six hundred and thirty-eight dollars and eighty-one cents, like money, for the like sum of money by the said

plaintiffs and for the use of the said defendant before that time paid, laid out, and expended, at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time lent and advanced to the said defendant, at the special instance and request of the said defendant, and for other money by the said defendant before that time had and received to the use of the said plaintiffs; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, undertook and faithfully promised the said plaintiffs the said last mentioned sum of money, when afterwards he should be thereunto required:

And whereas the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiffs, and then being in arrear and unpaid; and upon that account the said defendant was then and there found in arrear, and indebted to the plaintiffs in a large sum of money, to wit, in the further sum of six hundred and thirty-eight dollars and eighty-one cents, like money; and so being found in arrear, and indebted to said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised to the said plaintiffs to pay them the said last mentioned sum of money, when he should be thereunto afterwards required.

Yet the said defendant, not regarding his said several promises and undertakings so by him made in this behalf as aforesaid, but contriving and fraudulently intending, craftily and subtilely, to deceive and defraud the said plaintiffs in this respect, hath not yet paid the said several sums of money, or any part thereof, to the said plaintiffs, (although so to do the said defendant was requested, by the said plaintiffs, on the same day and year aforesaid, and often afterwards, at the county aforesaid,) but he to do this hath hitherto refused, and still refuses; wherefore the said plaintiffs say they are injured, and have sustained damage to the value of thirteen hundred dollars, current money; and therefore they bring suit, &c.

JOHN DOE and RICHARD ROE. } Pledges, &c.

F. S. KEY, *Att'y U. S., D. C.*

March term, 1835.

At which mentioned fourth Monday of March, in the year eighteen hundred and thirty, and the day of the return of the aforegoing writ, come again into the circuit court here the said plaintiffs, by their attorney aforesaid; and the marshal of the District aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's return.

"Non est." A. HUNTER, *Marshal.*

Rule plea.

Whereupon, by leave of the court here, the said defendant voluntarily appears in court here, by Walter Jones, esq., his attorney; and thereupon, on motion of the said plaintiffs by their attorney aforesaid, it is ruled by the court here that the said defendant answer to the declaration aforesaid of the said plaintiffs, in the plea aforesaid, or judgment by the court here will be rendered against him in default thereof. Whereupon the said defendant, by his attorney aforesaid, defends the force and injury, when, &c., and prays leave of the court here to imparle until the third Monday of October next, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid; and to him it is granted—the same day is given to the said plaintiffs also.

Non assumpsit.—Issue joined.

At which mentioned third Monday of October, eighteen hundred and thirty-five, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, come again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendant by his attorney aforesaid; and thereupon the said defendant, by his attorney aforesaid, as before, defends the force and injury, when, &c., and saith that he did not assume upon himself in manner and form as the aforesaid plaintiffs above against him have declared; and of this he puts himself upon the country; and the said plaintiffs, by their attorney aforesaid, in like manner, and so forth. Therefore let a jury thereon appear before the court here, on the fourth Monday of March next, by whom, &c., and who, neither, &c., to recognise, &c., because as well, &c.; the same day is given to the said parties then and there, and so forth.

At which mentioned fourth Monday of March, eighteen hundred and thirty-six, come again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his attorney aforesaid; and thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attorneys aforesaid; and by order of the court here thereon, the said cause is regularly continued from term to term unto October term, eighteen hundred and fifty.

And now, at this day, to wit, the said third Monday of October, eighteen hundred and fifty, come again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his attorney aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here that twelve persons from the panel of petit jurors returned to the court here by the marshal of the District of Columbia, who being called come, to wit:

Jury.

1, Pierce Shoemaker; 2, Offutt Boutcher; 3, W. S. Cohoun; 4, Joseph Follansbee; 5, Michael Keller; 6, Elexius Simmes; 7, George McNier; 8, Samuel Stott; 9, James Cull; 10, James Miller; 11, Wm. N. Waters; 12, Geo. W. Harkness. Who, being duly empaneled and sworn to say the truth of and upon the premises aforesaid, upon their oath, do say:

Verdict for plaintiffs.—Damages.

That the said defendant did assume upon himself, in manner and form as the said plaintiffs above against him have declared; and they assess the damages of the said plaintiffs, sustained by occasion of the non-performance of the promise and assumption aforesaid, to the sum of six hundred and thirty-eight dollars and eighty-one cents, with interest from the thirteenth of January, eighteen hundred and thirty-three; whereupon, that the court here are not advised to give their judgment of and upon the premises aforesaid, day therefor is given to the said parties to hear thereof their judgment until the fourth Monday of March next, because as yet, &c.

March term, 1851.

At which mentioned fourth Monday of March, eighteen hundred and fifty-one, to which said day said cause was continued, come again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid; and forasmuch as the said court here, as yet, are not advised, &c., day thereof is further given to the said parties to hear thereof their judgment until the third Monday of October next, for that the said court here as yet, &c.

October term, 1851.

At which mentioned third Monday of October, eighteen hundred and fifty-one, to which said day said cause was continued, come again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his attorney aforesaid; and forasmuch as the court here, as yet, are not advised, &c., day therefore is further given to the said parties to hear thereof their judgment until the fourth Monday of March next, for that the court here as yet are not, &c.

March term, 1852.

At which mentioned fourth Monday of March, eighteen hundred and fifty-two, to which said day said cause was continued, come again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendant, by his attorney aforesaid; and forasmuch as the court here, as yet, are not advised, &c., day therefore is further given to the said parties to hear thereof their judgment of and upon the premises aforesaid, until the third Monday of October next, for that the court here, as yet, are not, &c.

October term, 1852.

And now, at this day, to wit, the said third Monday of October, eighteen hundred and fifty-two, come again into the circuit court here, as well the said plaintiffs by their attorney aforesaid, as the said defendant by his attorney aforesaid.

Judgment.

Whereupon, all and singular the premises being by the court here seen and heard, and fully understood, it is considered by the court here, that the said plaintiffs recover against the said defendant, as well the said sum of six hundred and thirty-eight dollars and eighty-one cents, with interest from the thirteenth day of January, eighteen hundred and thirty-three, their damages aforesaid, in form aforesaid assessed to be sustained by occasion of the non-performance of the promise and assumption aforesaid, as the sum forty-nine dollars and two cents, by the court here unto the said plaintiffs on their assent adjudged for their costs and charges by them about their suit in that behalf laid out and expended; and the said defendant in mercy, &c.

Test: JNO. A. SMITH, *Clerk.*

Memorandum.

Mem.—Before the jurors aforesaid retired from the bar of the court here, the said defendant, by his attorney aforesaid, filed in court here the following bill of exceptions:

Agreed statement of facts, and defendant's bill of exceptions.

UNITED STATES
vs.
ADAM D. STEWART.

On or about the 12th March, 1818, the defendant was appointed by the President of the United States collector for the district of Michilimackinac, and inspector of the revenue for the port thereof; which offices he continued to hold by successive re-appointments, and to receive the emoluments of, till the 15th day of January, 1833.

On or about the 1st April, 1819, the defendant was appointed by the Secretary of the Treasury inspector of the customs for the port of Michilimackinac; which office he continued to hold, under his original appointment, until January 15th, 1833. The defendant's is the only case found on record of a collector holding, at the same time, the office of inspector of the customs. His allowance, in this capacity, was fixed by the secretary at $40 a month, and so continued until the second quarter of the year 1820, when it was increased by the secretary to $3 per day, the maximum allowance permitted by law to a regular inspector of the customs. The defendant continued to be paid as inspector of the customs at this rate till the 1st July, 1822, when the act of Congress, of 7th May, 1822, went into effect, entitled "An act further to establish

the compensation of officers of the customs, and to alter certain collection districts, and for other purposes." (3d U. S. Stat. L. 693.) The eighteenth section of this act is as follows: "No collector, surveyor, or naval officer shall ever receive more than $400 annually, exclusive of his compensation as collector, surveyor, or naval officer, and the fines and forfeitures allowed by law for any services he may perform for the United States in any other office or capacity."

A copy of the foregoing law was duly transmitted by the Treasury Department to the defendant. In his accounts for the 3d and 4th quarters of the year 1822, the defendant charged compensation at the rate of $3 a day as inspector of customs, which charge was disallowed at the Treasury; and in his accounts for the three first quarters of the year 1823, he charged compensation at the rate of $40 a month, as inspector of the customs, which latter charge was also disallowed at the Treasury. The defendant rendered several other accounts, containing no charge as inspector of the customs, till the end of the year 1824. In a Treasury settlement, made at that date, the defendant is credited with $1000, "the amount of an allowance made by the Secretary of the Treasury to the collector for services as inspector from 1st July, 1822, to 31st December, 1824, at $400 per annum. In his account rendered for the 1st quarter of the year 1825, the defendant charged himself with the balance found due from him on the next preceding settlement in which he had been allowed but $400 per annum, as inspector of the customs; and in his several successive settlements from that time to 31st December, 1831, continued to charge only $400 per annum as inspector of the customs.

By the act of 2d March, 1831, "to regulate the foreign and coasting trade on the northern, northwestern and northeastern frontiers of the United States, and for other purposes," (4th U. S. St. at L., 487,) the compensation of every collector, "on the northern, northeastern, and northwestern lakes and rivers," was fixed "at an amount equal to the entire compensation received by such officer during the past year." The defendant was credited in 1831, and subsequently, with the compensation allowed to him in 1830, being $835 $\frac{85}{100}$, which included $400 allowed him as inspector of the customs. In 1832 he charged his compensation under this law; but in the 4th quarter of that year he claimed the difference between $400 and $1,095 a year from 30th June, 1822, to 31st of December, 1832, being $7,297 $\frac{50}{100}$, for ten years and six months. This claim was, before the commencement of this suit, presented to the accounting officers of the Treasury for their examination, and by them was disallowed.

On the foregoing evidence the counsel for the defendant prayed the court to instruct the jury as follows:

That the 18th section of the act of Congress, passed on the 7th of May, 1822, further to establish the compensation of officers of the customs, &c., was not intended to operate, and ought not to be construed as operating so as to limit to $400 per annum the salary or compensation of any district officer, which may, by distinct and in-

dependent appointment, be vested in the person of one holding at the same time the separate office of collector, surveyor, or naval officer; and that such limitation applies only to cases where the collector, surveyor, or naval officer is called to perform services in any other office or capacity in virtue of, and as an incident to, his office; not to any case where either of those officers was appointed to, and executed the duties of another separate office, whilst collector, surveyor, or naval officer.

If therefore the defendant was appointed to, and held and exercised, the office of inspector of customs at the same time as that of collector of Michilimackinac, such office of inspector was not within the purview of the 18th section of the said act.

Which instruction the court refused to give; to which refusal the defendant, by his counsel, excepts, and prays the court to sign and seal this his bill of exceptions, which is accordingly done this 18th day of November, in the year eighteen hundred and fifty.

JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP, [SEAL.]

Appeal prayed.

And whereas, afterwards, to wit, on the first day of September, eighteen hundred and fifty-three, the said Adam D. Stewart produced and filed in court here the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, for the county of Washington, and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond, hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this 5th day of December, 1853.

[SEAL.]

JOHN A. SMITH, *Clerk.*